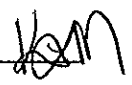




**BOARD OF COUNTY COMMISSIONERS'
(BOCC) CONCURRENCE FORM**

This form must be completed for all staff reports being prepared for BOCC meetings/public hearings and is the cover sheet for the staff report. The original (single-sided) staff report needs to be submitted to the County Manager's Office one (1) week in advance of the scheduled presentation date. For Closed Sessions please submit the original (single-sided) and 8 (double-sided copies) of the staff report.

To: Office of the County Manager

From (Name & Division): Kathy Mitchell, Asst. County Attorney  **Date:** 04/13/12

Phone#: X16054 **E-mail Address:** kmitchell2@frederickcountymd.gov

Staff Report Topic:

(The text provided here will also be reflected on the meeting agenda and county's website.)

Parcel G Transfer to Matan Affiliate

Requested Meeting Date (mm/dd/yr): April 19, 2012 **Est. Presentation Time:** 5 minutes

Type of Meeting:

(Click to place a check mark in the following appropriate boxes.)

☒ **Administrative Business** *(The Consent Agenda Committee determines which items are eligible for the consent agenda.)*

☐ **Worksession** ☐ **Closed Session** ☐ **Public Hearing** (a.m. ☐ or p.m. ☐)

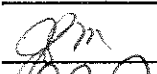

☐ **BOCC/BOE Mtg.** ☐ **County/Municipalities Mtg.**

☐ **Power Point Presentation**

Board Action Desired: ☒ **Decision** ☐ **Guidance** ☐ **Information**

Staff Report Review:

This staff report has been thoroughly reviewed first by the appropriate divisions/agencies noted on Page 2 followed by those outlined below :

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(Page 2)</u>
<input type="checkbox"/> Budget Officer	_____	_____	_____
<input type="checkbox"/> Finance Director	_____	_____	_____
<input checked="" type="checkbox"/> County Attorney's Office		<u>4/16/12</u>	<u>no</u>
<input checked="" type="checkbox"/> County Manager		<u>4/17/12</u>	<u>N</u>

Other Reviewing Divisions/Agencies:

(Click to place a check mark in the following appropriate spaces.)

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
<input type="checkbox"/> Animal Control			
<input type="checkbox"/> Citizens Services			
<input checked="" type="checkbox"/> Community Development	<i>all</i>	4-12	
<input type="checkbox"/> Emergency Management			
<input type="checkbox"/> Fire & Rescue Services			
<input type="checkbox"/> Health Services			
<input type="checkbox"/> Human Resources			
<input type="checkbox"/> Interagency Information Technologies			
<input type="checkbox"/> Internal Audit			
<input type="checkbox"/> Management Services			
<input checked="" type="checkbox"/> Parks & Recreation	<i>[Signature]</i>	4/13/12	
<input checked="" type="checkbox"/> Public Works		4/13/2012	N
<input type="checkbox"/> Transit Services			
<input type="checkbox"/> Utilities & Solid Waste Management			
Other: _____			
Other: _____			
Other: _____			

Elected Officials or Independent Agencies:

	<u>Initials</u>	<u>Date</u>	<u>Comments Y/N</u> <u>(noted below)</u>
<input type="checkbox"/> Board of Education			
<input type="checkbox"/> Board of Elections			
<input type="checkbox"/> Board of License Commissioners			
<input type="checkbox"/> Citizens Care & Rehabilitation Center			
<input type="checkbox"/> Frederick Community College			
<input type="checkbox"/> Frederick County Public Libraries			
<input type="checkbox"/> Montevue Assisted Living			
<input type="checkbox"/> Sheriff's Office			
<input type="checkbox"/> Social Services			
<input type="checkbox"/> State's Attorney's Office			

Comments:

1. <u>From:</u> _____	<u>Date:</u> _____
2. <u>From:</u> _____	<u>Date:</u> _____
3. <u>From:</u> _____	<u>Date:</u> _____
4. <u>From:</u> _____	<u>Date:</u> _____
5. <u>From:</u> _____	<u>Date:</u> _____



COMMISSIONERS

Blaine R. Young
President

C. Paul Smith
Vice President

Billy Shreve

David P. Gray

Kirby Delauter

COUNTY ATTORNEY

John S. Mathias

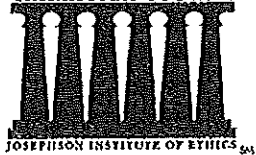
SENIOR ASSISTANT COUNTY ATTORNEYS

Michael J. Chomel
Linda B. Thall

ASSISTANT COUNTY ATTORNEYS

Richard J. McCain
Kathy L. Mitchell

CHARACTER COUNTS!



TRUSTWORTHINESS • RESPECT
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Pillars of Character are service
marks of the CHARACTER
COUNTS! Coalition, a project of the
Josephson Institute of Ethics.
www.charactercounts.org

OFFICE OF THE COUNTY ATTORNEY FREDERICK COUNTY, MARYLAND

Winchester Hall • 12 East Church Street • Frederick, Maryland 21701
301-600-1030 • FAX 301-600-1161 • TTY: Use Maryland Relay
www.FrederickCountyMD.gov

EXECUTIVE SUMMARY

Staff Report Topic: Parcel G Transfer to Matan Affiliate

County Funds Requested/Required: None

ISSUE: Should the BOCC sign the attached Deed which transfers Parcel G to an affiliate of the Matan Companies?

BACKGROUND: By Ordinance No. 94-14-109, the Board of County Commissioners (BOCC) granted approval of an MXD Floating Zone classification for the 377-acre Westview parcel of land. One of the conditions of the rezoning was the requirement for the applicant to transfer to the County a "school/Public Use Site of at least 20 acres".

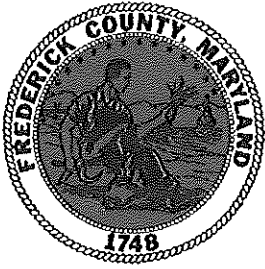
The school/public use site, which was designated as Parcel G, was subject to certain conditions prior to transfer to the BOCC. In June 2010, Old Chapel Corporation submitted a deed dated August 13, 2009 (the "Old Chapel Deed"), which conveyed three (3) parcels of land to the County, including "Parcel B," "Parcel E" and "Parcel G" in the Westview South MXD.

On April 10, 2012, affiliates of the Matan Companies acquired the remaining lands in the Westview South MXD. Matan has proposed deeding Parcel G back so that the conditions precedent to acceptance of the parcel can be satisfied. Matan has assigned all of its Parcel G rights to an affiliate, WVS Parcel 400, LLC (WVSP400). Old Chapel also assigned all of its claims and interest in and to Parcel G to WVSP400.

DISCUSSION: Matan has asked that the County sign the attached Deed, which will transfer Parcel G to WVSP400. WVSP400 will clean up Parcel G, which has been used as a staging site for construction, and work with County staff to fulfill the condition to provide a public use site to the County.

In the Deed, WVSP400 has agreed that the transfer of Parcel G will not obviate or otherwise affect the public use site condition or any other condition of rezoning approval of the Westview South MXD. In addition, by the attached letter dated April 11, 2012 from its attorney, Philip Topper, WVSP400 has agreed to dedicate to the County, for no consideration, the necessary easements on Parcel G for the Ballenger Creek Trail.

RECOMMENDATION: Staff has no objections to the BOCC signing the attached Deed to correct the erroneous transfer of Parcel G to the County.



COMMISSIONERS

Blaine R. Young
President

C. Paul Smith
Vice President

Billy Shreve

David P. Gray

Kirby Delauter

COUNTY ATTORNEY

John S. Mathias

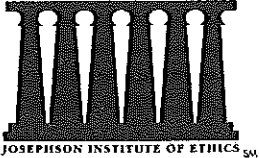
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MEMORANDUM

TO: Board of County Commissioners

FROM: Kathy L. Mitchell, Assistant County Attorney *KLM*

DATE: April 12, 2012

RE: Parcel G Transfer to Matan Affiliate

ISSUE: Should the BOCC sign the attached Deed which transfers Parcel G to an affiliate of the Matan Companies?

BACKGROUND: By Ordinance No. 94-14-109, the Board of County Commissioners (BOCC) granted approval of an MXD Floating Zone classification for the 377-acre Westview parcel of land. In 2001, by Ordinance No. 01-15-289, the BOCC revised some of the conditions of the MXD rezoning.

One of the conditions that was not revised by Ordinance No. 01-15-289 was the requirement for the applicant to transfer to the County a "school/Public Use Site of at least 20 acres" in a location to be "mutually agreed upon by the applicant, the Planning Staff and the Board of Education".

The school/public use site, which was designated as Parcel G, was subject to certain conditions prior to transfer to the BOCC, which were described in a letter from Staff to the Matan Companies (with a copy to Old Chapel Corporation) dated March 22, 2010. The letter listed certain requirements prior to transfer of the property, including but not limited to fine grading of the site, a Phase I environmental study, and an ALTA survey.

In June 2010, Old Chapel Corporation submitted a deed dated August 13, 2009 (the "Old Chapel Deed"), which conveyed three (3) parcels of land to the County, including "Parcel B," "Parcel E" and "Parcel G" in the Westview South MXD. County Staff cannot explain why Old Chapel transferred Parcel G to the County without first complying with the conditions of acceptance. Until staff received a letter from Rand Weinberg, counsel for the Matan Companies, dated March 9, 2011, staff did not realize that the deed included Parcel G.

On April 10, 2012, affiliates of the Matan Companies acquired the remaining lands in the Westview South MXD. Since Parcel G was transferred to the County in error, Matan has proposed deeding Parcel G back so that the conditions precedent to acceptance of the parcel can be satisfied before it is transferred to the County. On April

10, 2012, Matan assigned all of its Parcel G rights to an affiliate, WVS Parcel 400, LLC (WVSP400). On the same date, Old Chapel also assigned all of its claims and interest in and to Parcel G to WVSP400. Therefore, WVSP400, a Matan affiliate, has agreed to accept transfer of Parcel G in place of Old Chapel, as evidenced by the attached Special Warranty Deed.

DISCUSSION: Matan has asked that the County sign the attached Deed, which will transfer Parcel G to WVSP400. WVSP400 will clean up Parcel G, which has been used as a staging site for construction, and work with County staff to fulfill the condition to provide a public use site to the County.

In the Deed, WVSP400 has agreed that the transfer of Parcel G will not obviate or otherwise affect the public use site condition or any other condition of rezoning approval of the Westview South MXD. In addition, by the attached letter dated April 11, 2012 from its attorney, Philip Topper, WVSP400 has agreed to dedicate to the County, for no consideration, the necessary easements on Parcel G for the Ballenger Creek Trail.

RECOMMENDATION: Staff has no objections to the BOCC signing the attached Deed to correct the erroneous transfer of Parcel G to the County.

Attachments

Letter from Phil Topper dated April 11, 2012
Assignment dated April 10, 2012
Special Warranty Deed

cc: John Mathias, County Attorney
Paul Dial, Director, DPR
Tom Meunier, Director, DPW
Eric Soter, Director, CDD

Law Offices
PHILIP D. TOPPER, JR., LLC
A Professional Limited Liability Company
110 North Court Street
Frederick, Maryland 21701
Telephone: 301-696-9780
Facsimile: 301-696-0858
email: philtopper@aol.com

April 11, 2012

VIA HAND DELIVERY

Kathy L. Mitchell, Esquire
Assistant County Attorney
30 North Market Street
Frederick, Maryland 21701

Re: Westview South MXD/Parcel G

Dear Kathy:

Yesterday, affiliates of the Matan Companies acquired the remaining lands in Westview South MXD owned by Old Chapel Corporation. In connection with the reconveyance of Parcel G within Westview South MXD, enclosed are the following documents:

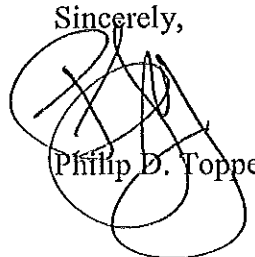
(1) Executed copy of the Assignment dated April 10, 2012, by Old Chapel Corporation (Assignor) unto WVS Parcel 400, LLC (Assignee), assigning Old Chapel's rights, claims and interests in and to Parcel G; and

(2) Original of the Special Warranty Deed from the Board of County Commissioners of Frederick County, Maryland (BOCC), unto WVS Parcel 400, LLC, which has been signed by the Grantee.

On behalf of WVS Parcel 400, LLC, the Grantee of Parcel G, I can confirm that at the appropriate time, WVS Parcel 400, LLC will dedicate to Frederick County, for no consideration, the necessary easements on Parcel G for the stream valley trail system that is to be constructed and maintained by the County, and which was discussed at our meeting on March 24, 2011 with County staff.

I understand that the BOCC will be discussing/acting on the enclosed Deed at its work session on Thursday, April 19, 2012. Matan and I request that the Deed be signed by the President of the BOCC on that day. Please let me know when the Deed is signed. Thank you.

Sincerely,



Philip D. Topper, Jr.

ASSIGNMENT

THIS ASSIGNMENT is made this 10th day of April, 2012, by and between Old Chapel Corporation, a Maryland corporation (the "Assignor"), and WVS Parcel 400, LLC, a Maryland limited liability company, its successors and assigns (the "Assignee").

WHEREAS, Assignor, as seller, and Matan Acquisitions, Inc. a Maryland corporation, as purchaser ("Matan"), entered into a Purchase and Sale Agreement dated March 11, 2011, as amended (the "Agreement"), pursuant to which Assignor agreed to sell, and Matan or its assigns agreed to purchase, the remaining lands of Westview South MXD owned by Assignor; and

WHEREAS, Assignor previously conveyed certain parcels of land within Westview South MXD to the Board of County Commissioners of Frederick County, Maryland (the "County"), pursuant to a Special Warranty Deed dated August 13, 2009 and recorded in Liber 7881, folio 358, among the Land Records of Frederick County, Maryland (the "Land Records"); and

WHEREAS, one of the parcels conveyed by Assignor to the County is Parcel G consisting of 35.44481 acres and as shown on a plat entitled "FINAL PLAT, PARCELS G AND H, WESTVIEW SOUTH, OFFICE RESEARCH CENTER" and recorded in Plat Book 86, page 180, among the Land Records ("Parcel G"); and

WHEREAS, pursuant to the Agreement, Assignor agreed to transfer, convey and assign to Matan or its assigns all of Assignor's rights, title, interests, claims, privileges and benefits that Assignor may have in and to Parcel G, including without limitation, any and all rights and claims of Assignor to receive or accept a re-conveyance of Parcel G from the County, whether in Assignor's capacity as the prior grantor of Parcel G or in its capacity as the Declarant under the COA Declaration (collectively the "Assignor's Parcel G Rights"); and

WHEREAS, Matan has assigned to Assignee all of Matan's rights to receive Assignor's Parcel G Rights pursuant to an assignment of the Agreement of even date herewith; and

WHEREAS, Assignor and Assignee have agreed that Assignor shall assign and transfer Assignor's Parcel G Rights to Assignee, and Assignee has agreed to accept such assignment and transfer of Assignor's Parcel G Rights from Assignor, pursuant to and in accordance with this Assignment.

WITNESSETH: That for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

1. Assignor hereby transfers, grants, conveys, sets over and assigns to Assignee all of Assignor's Parcel G Rights, and Assignee hereby accepts such transfer and assignment of Assignor's Parcel G Rights from Assignor in its "AS IS", "WHERE IS" and "WITH ALL FAULTS" condition, and with no recourse against Assignor.

2. Assignor makes no representations or warranties whatsoever regarding Parcel G or Assignor's Parcel G Rights, direct or indirect, oral or written, express or implied, as to title, encumbrances and liens, merchantability, condition or fitness for a particular purpose or any other warranty of any kind, all of which representations and warranties are expressly hereby disclaimed and denied.


3. The introductory recitals are incorporated herein and accurately reflect the factual basis for this Assignment and the intentions of the parties hereto. This Assignment shall be binding and inure to the benefit of the parties hereto and their respective successors and assigns.

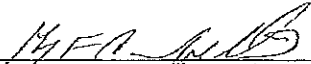
IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed, under seal, and delivered as of the day and year first above written.

WITNESS:

ASSIGNOR:

OLD CHAPEL CORPORATION,
a Maryland corporation

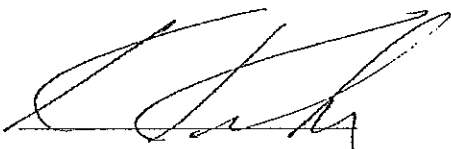

Bryan Spell

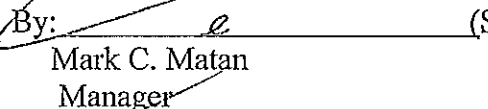
By:  (SEAL)
Print Name: Gay F. Campbell
Title: President

WITNESS:

ASSIGNEE:

WVS PARCEL 400, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland
limited liability company, Manager
By: Wedgewood Investment Management,
LLC, a Maryland limited liability
company, Manager



By:  (SEAL)
Mark C. Matan
Manager

STATE OF MARYLAND, Montgomery COUNTY, TO WIT:

I hereby certify that on this 9 day of April, 2012, before me, the Subscriber, a Notary Public in and for the State of Maryland, personally appeared Guy F Campbell, III President of Old Chapel Corporation and he/she did acknowledge the foregoing instrument to be his/her act and deed as said President.

Witness my hand and Notarial Seal.

My Commission Expires: 12/17/12

[Signature]
NOTARY PUBLIC

BRYAN SPELL
Notary Public-Maryland
Charles County
My Commission Expires
December 17, 2012

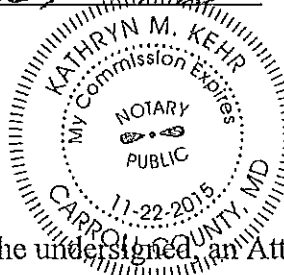
STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY, that on this 10th day of April, 2012, before me, the undersigned Notary Public of said State, personally appeared Mark C. Matan, who acknowledged himself to be the Manager of Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager of Westview South Holdings, LLC, Manager of WVS Parcel 400, LLC, a Maryland limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized Manager of said limited liability company by signing the name of the limited liability company by himself as Manager.

WITNESS my hand and Notarial Seal.

My Commission Expires: 11-22-2015

[Signature]
Notary Public



This instrument has been prepared under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

[Signature]
Philip D. Topper, Jr., Esq.

NO CONSIDERATION
NO TITLE EXAMINATION

SPECIAL WARRANTY DEED

THIS DEED, is made this _____ day of April, 2012, by and between the **BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND**, a body politic and corporate of the State of Maryland, hereinafter referred to as the "Grantor," and WVS Parcel 400, LLC, a Maryland limited liability company, hereinafter referred to as the "Grantee."

WITNESSETH:

WHEREAS, by Ordinance No. 94-14-109, the Board of County Commissioners of Frederick County, Maryland (BOCC) granted approval of an MXD Floating Zone classification for the 377-acre Westview parcel of land, and in 2001, by Ordinance No. 01-15-289, revised some of the conditions of the MXD rezoning; and

WHEREAS, one of the conditions that was not revised by Ordinance No. 01-15-289 was the requirement for the applicant to transfer to the County a "school/Public Use Site of at least 20 acres" in a location to be "mutually agreed upon by the applicant, the Planning Staff and the Board of Education," such condition hereinafter referred to as the "Public Use Site Condition;" and

WHEREAS, the Public Use Site, which was designated as Parcel G, was subject to certain conditions prior to transfer of the site to the BOCC, which were described in a letter from Staff to the Matan Companies dated March 22, 2010; and

WHEREAS, by deed dated August 13, 2009 and recorded in Liber 7881, folio 358, among the Land Records of Frederick County, Maryland (the "Old Chapel Deed"), Old Chapel Corporation, a Maryland corporation ("Old Chapel"), conveyed three (3) parcels of land unto the Grantor herein, such parcels being "Parcel B," "Parcel E" and "Parcel G" in the Westview South MXD, as same are more particularly described on EXHIBIT A to the Old Chapel Deed; and

WHEREAS, the Grantee is the assignee of Old Chapel's rights, claims and interests in and to the Parcel G as described in the Old Chapel Deed pursuant to an Assignment dated April 10, 2012, by and between Old Chapel, as assignor, and Grantee, as assignee, and the Grantee and its affiliates are also the successors in interest to Old Chapel with respect to the Westview South MXD; and

WHEREAS, at the time of the acceptance of delivery of the Old Chapel Deed and the recordation of the Old Chapel Deed by the Grantor, it was the intention of the Grantor to obtain title to only Parcel B and Parcel E, not Parcel G, with Parcel G having been included on EXHIBIT A to the Old Chapel Deed in error; and

WHEREAS, to correct such error, Grantor has agreed to execute this Deed to the Grantee for the purpose of conveying title to Parcel G to the Grantee, and Grantee has agreed to accept this Deed; and

WHEREAS, it is the intention of the Grantor, and it is agreed by Grantee, that neither the Public Use Site Condition nor any other condition of rezoning approval of the Westview South MXD shall be obviated or otherwise affected by the execution, delivery and recordation of this Deed.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) in hand paid by the Grantee and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the said Grantor does hereby grant, confirm and convey unto the Grantee, its successors, transferees and assigns, in fee simple, all that parcel of land, situate, lying and being in the Buckeystown (1st) Election District and Frederick (2nd) Election District of Frederick County, Maryland, as more particularly described in the legal description attached hereto and made a part hereof as EXHIBIT A (hereinafter the "Property").

TOGETHER WITH all and singular the buildings, improvements, ways, easements, rights, waters, privileges, covenants, and appurtenances to the same belonging, benefiting or in any way appertaining, and all the estate, title, right, interest and claim, either at law or in equity, or otherwise, of the said Grantor, of, in, or out of the said Property.

TO HAVE AND TO HOLD said Property above described or mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the only proper use, benefit and behoof forever of the said Grantee, its successors and assigns.

AND the said Grantor covenants that it will warrant specially the Property hereby conveyed; that it will execute such further assurances of said Property as may be requisite.

[Signatures on Following Page]

IN WITNESS WHEREOF, the undersigned have executed this Deed the day and year first above written.

ATTEST/WITNESS:

GRANTOR:

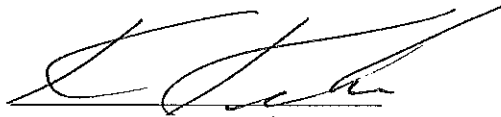
BOARD OF COUNTY COMMISSIONERS OF
FREDERICK COUNTY, MARYLAND

By: _____ (SEAL)
Blaine R. Young, President

ATTEST/WITNESS:

GRANTEE:

WVS PARCEL 400, LLC,
a Maryland limited liability company
By: Westview South Holdings, LLC, a Maryland
limited liability company, Manager
By: Wedgewood Investment Management,
LLC, a Maryland limited liability
company, Manager



By: _____ (SEAL)
Mark C. Matan
Manager

STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I hereby certify that on this ____ day of April, 2012, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Blaine R. Young, who acknowledged himself to be the President of the Board of County Commissioners of Frederick County, Maryland, a body corporate and politic, and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the body corporate and politic by him as President.

WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires:

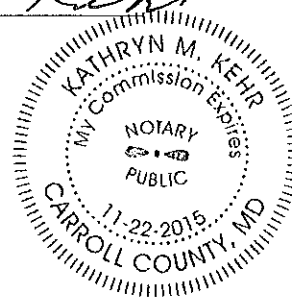
STATE OF MARYLAND, COUNTY OF FREDERICK, TO WIT:

I HEREBY CERTIFY that on this 10th day of April, 2012, before me, the Subscriber, a Notary Public in and for the State aforesaid, personally appeared Mark C. Matan, Manager of Wedgewood Investment Management, LLC, a Maryland limited liability company, Manager of Westview South Holdings, LLC, a Maryland limited liability company, Manager of WVS Parcel 400, LLC, a Maryland limited liability company, and he did acknowledge the foregoing instrument to be the act and deed of WVS Parcel 400, LLC and that he is duly authorized to make this acknowledgement on its behalf.

WITNESS my hand and Notarial Seal.


Notary Public

My Commission Expires: 11-22-15



Attorney's Certification

I hereby certify that the foregoing document was prepared by or under the supervision of the undersigned, an attorney duly licensed to practice before the Court of Appeals of Maryland.

Name: _____

EXHIBIT A

Parcel G, consisting of approximately 35.44481 acres, as shown on a subdivision plat entitled "FINAL PLAT, PARCELS G AND H, WESTVIEW SOUTH, OFFICE RESEARCH CENTER, Buckeystown (1st) Election District, Frederick (2nd) Election District, Frederick County, Maryland," and recorded among the Plat Records of Frederick County, Maryland in Plat Book 86, page 180.

The above described parcel being part of the property conveyed to the Board of County Commissioners of Frederick County, Maryland by deed from Old Chapel Corporation dated August 13, 2009 and recorded in Liber 7881, folio 358 among the Land Records of Frederick County, Maryland.